

INFORMATION BULLETIN #37

SALES TAX

AUGUST 2004

(Replaces Bulletin #37 dated January 2003)

DISCLAIMER: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Sales by Out-of-State Merchants

REFERENCES: IC 6-2.5-4-1; IC 6-2.5-4-14; IC 6-2.5-3-1;
IC 6-2.5-8-1

I. Definition of Indiana Retail Merchant

A person is an Indiana Retail Merchant and must be registered with the Department to collect Indiana Use Tax if the retail merchant is engaged in selling at retail for use, storage, or consumption in Indiana and is:

1. Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in Indiana unless the property is subsequently shipped to another state;
2. Has a representative, agent, salesman, canvasser, or solicitor operating in Indiana under the authority of the retail merchant or its subsidiary for the purpose of selling, delivering, installing, repairing, assembling, setting up, accepting returns, billing, invoicing or taking orders for the sale of any tangible personal property for use, storage or consumption in Indiana;
3. Closely related to another person that maintains a place of business in Indiana; or
4. Entering into a contract to provide property or services to a state agency or a state educational institution.

II. Engaged in Business in Indiana

An out-of-state vendor is engaged in business in Indiana and must be registered as an Indiana Retail Merchant and charge Indiana Use Tax on tangible personal property delivered into Indiana if the out-of-state vendor's only Indiana activity is within one of the four categories above. This activity may include any of the following:

- a. maintaining an administrative office;
- b. maintaining a research facility;
- c. displaying merchandise at local trade fairs and exhibitions;
- d. maintaining a factory or warehouse; or
- e. delivering goods into Indiana by the seller's truck where title and possession transfer in Indiana.

III. Not Engaged in Business in Indiana

An out-of-state vendor is NOT engaged in business in Indiana and therefore is NOT required to register as an Indiana Retail Merchant

and charge Indiana Use Tax on tangible personal property delivered in Indiana where the out-of-state vendor's ONLY Indiana activity is any of the following:

1. owning Indiana realty for investment;
2. being "qualified" to do business in Indiana;
3. purchasing goods in Indiana;
4. conducting credit investigations;
5. delivering goods by common carrier or parcel post.

IV. Consigned Goods

An out-of-state seller who consigns tangible personal property to an Indiana resident "on approval" is deemed to be engaged in business in Indiana, and must register as an Indiana Retail Merchant to collect Indiana Use Tax on such transactions.

An out-of-state seller whose only business activity in Indiana is the consignment of tangible personal property to an Indiana resident on a "sale or return" basis is deemed not to be engaged in business in Indiana and is not required to register to collect Indiana Use Tax.

V. Registration Procedures, Requirements and Privileges

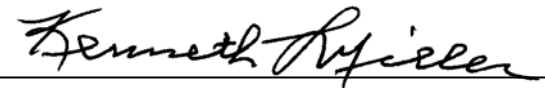
An Indiana Registered Retail Merchant's Certificate will provide the registrant authority to collect Indiana Sales or Use Tax. In addition, the registrant is entitled to privileges of exemption from the tax on purchases of items to be used for an exempt purpose. The Indiana Registered Retail Merchant's Certificate is permanent. The registration fee is \$25.00.

VI. Purchaser's Use Tax Liability

If an out-of-state vendor is not required to collect Indiana Use Tax, the Indiana purchaser is liable for the Indiana Use Tax on such purchases if the property is to be used, stored, or consumed in Indiana.

VII. Out-Of-State Tax Collection Permit

An out-of-state merchant not required to become registered as an Indiana Retail Merchant may voluntarily register for an Out-of-State Use Tax Collection and Remittance Permit. Holders of such permits must collect and remit Indiana Use Tax to the Department on sales of tangible personal property subject to the tax. This is a free registration. Registration may be done online at: www.in.gov/dor/electronic

A handwritten signature in black ink, reading "Kenneth L. Miller", written over a horizontal line.

Kenneth L. Miller
Commissioner